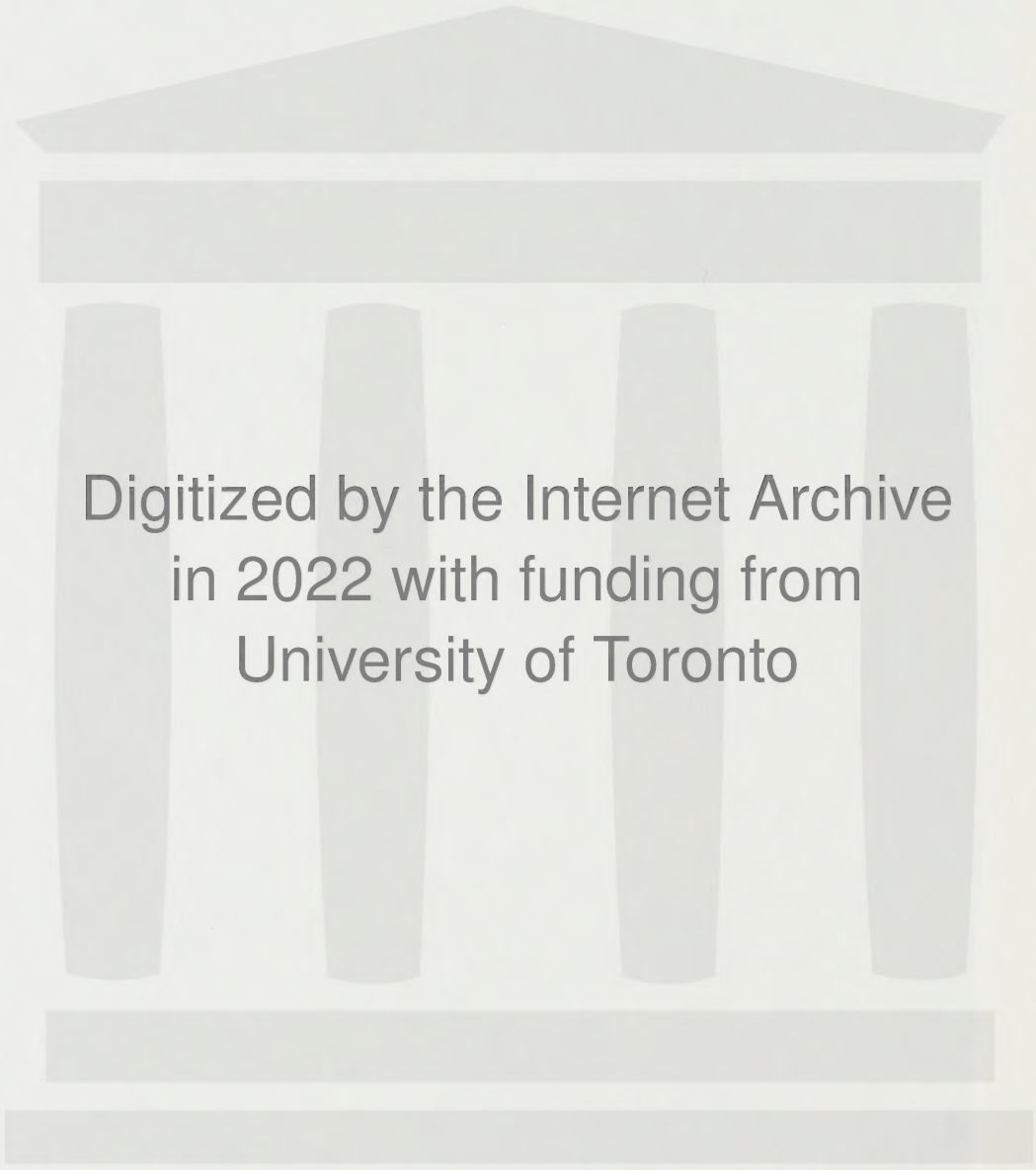

Ontario

Standing Committee on the Ombudsman

Report on Argosy Financial Group of Canada

3rd Session 33rd Parliament
36 Elizabeth II

STANDING COMMITTEE ON THE OMBUDSMAN

Ontario

LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

COMITÉ PERMANENT DE L'OMBUDSMAN

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on the Ombudsman has the honour to present its Report on Argosy Financial Group of Canada and commends it to the House.

Ronald K. McNeil

Ronald K. McNeil, M.P.P.,
Chairman

Queen's Park
May, 1987

MEMBERSHIP OF THE STANDING COMMITTEE ON THE OMBUDSMAN

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Clerk of the Committee

Ted Kerzner, Q.C.
Counsel to the Committee

Catherine Evans
Research Officer

1. Substituted for by George Ashe.
2. Substituted for by Steven Offer.

MEMBERSHIP OF THE STANDING COMMITTEE ON
THE OMBUDSMAN

DURING HEARINGS CONCERNING
ARGOSY FINANCIAL GROUP OF CANADA *

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* Conducted during the recess between the 2nd and 3rd Sessions, 33rd Parliament.
1. Substituted for by George Ashe.
2. Substituted for by Steven Offer.

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INTRODUCTION

In the Spring of 1980, the Argosy Group of Companies were placed into receivership by Court Order, on the application of its banker, the principal secured creditor. Argosy Finance (the name by which the parent company was known for most of its existence) owned 100% of the shares of its subsidiary, Argosy Investments. All of the individual shareholders of Argosy Investments held their shares in trust for Argosy Finance. Argosy Finance was largely owned, and certainly controlled, personally or through companies, by a number of persons, and latterly by John David Carnie ("Carnie").

Argosy Finance obtained money from the public by a number of means:

(a) It sold interests in syndicated mortgages to members of the investing public;

(b) It sold an RRSP program to members of the investing public;

(c) It sold unsecured debentures to the investing public.

Argosy Finance lent the monies that were raised from the public to its wholly owned subsidary Argosy Investments, a licenced mortgage broker. Argosy Investments lent those funds to borrowers by way of mortgage, primarily on major residential or commercial real estate projects. In its later years, a very large majority of those mortgage lendings were to borrowers (either personally or through corporations) who were related to the principal shareholders, directors or officers of Argosy Finance.

At the time of the collapse of the Argosy Group, in round figures, the following sums had been raised by Argosy Finance from the public:

Syndicated mortgages	$21.0 million
RRSP's	3.0 million
Debentures	5.0 million
Total	**$29.0 million**

With almost all of its business being conducted by means of mortgage loans to real estate developers, most of the assets therefore were lent to related borrowers on security of real estate mortgages. While some of the mortgage lendings ultimately produced complete or almost complete recoveries, the vast bulk produced no or little recovery.

Argosy's financial collapse resulted essentially from two main causes. First, Carnie caused the apparently fraudulent diversion of approximately $5.0 million of company funds to himself and other officers of the company for improper purposes. Second, the degree of self-dealing in mortgage lending to companies owned or controlled by Argosy officers and directors or their relatives resulted in too much lending of company assets to borrowers whose development projects were not sound.

After the cost of receivership, it is estimated that there will be about $2.0 million in recoveries available to distribute to investors in the syndicated mortgages (whether by way of direct investment or through RRSP investments). These will be distributed by project to those who had an interest in the particular project which produced a recovery. Given the size of the public participation in the syndicated mortgages and RRSP's, losses will remain very significant to most of that group of investors. There is no anticipated recovery for persons who purchased debentures.

THE ARGOSY GROUP AND ITS VICTIMS

The collapse of Argosy has left in its wake approximately 1,600 victims, who invested in syndicated mortgages, RRSP's and debentures. While no precise profile can be drawn, they appear to be geographically diverse, although the greatest number are Ontario residents. Most made investments of under $20,000. A very significant number were elderly. A not insignificant number found themselves having to return to work or without those small luxuries and even some necessities, that they had looked forward to during their retirement years.

The rates of return being offered by Argosy on syndicated mortgages and RRSP's were higher than could be obtained in other more conventional and safe investments. The debentures were of an even riskier nature being unsecured, and the second series of debentures that were issued were of even riskier nature by reason of their terms and the disclosure of risk factors and self-dealing that were disclosed in the prospectus documents.

THE OMBUDSMAN'S RECOMMENDATION

In excess of 300 persons complained to the Ombudsman. The Ombudsman carried out an initial investigation into those complaints, insofar as they pointed in the direction of governmental organizations, which is the limited extent of the Ombudsman's statutory mandate. The initial investigation was suspended, while criminal charges proceeded against Carnie, and upon their disposition, the Ombudsman took up again his investigation, which led ultimately to his report dated November 21, 1986. Because the governmental organizations against whom he had made certain adverse recommendations declined to implement those, the Ombudsman presented his report to the Legislature. The Report was referred to the Committee on January 26th, 1987, pursuant to Standing Order 90(g).

Apart from the very first matter dealt with by this Committee, when it was a Select Committee of the Legislature, almost a dozen years ago, his report in this case and the subsequent consideration of it by this Committee has proved to be the longest, most complex, and most difficult recommendation denied case that this Committee has had to consider. Apart from that very first matter some dozen years ago, it has occupied more public hearing and in camera time than any previous case.

The details of the Ombudsman's findings and recommendations are more particularly set out in his report. It is a public document having been tabled in the Legislature. While this report briefly summarizes its significant elements, the Ombudsman's report, in view of its bulk, is not appended to this report.

The Ombudsman found that the conduct of both the Registrar of Mortgage Brokers ("the Registrar") and the Ontario Securities Commission ("the OSC") were wrong or unreasonable within the meaning of those terms in the Ombudsman Act, in the following general respects:

(a) With respect to the Registrar, he failed to take any or appropriate action to regulate or inspect the affairs or operation of Argosy Investments, or its continued desirability to hold its licence, and failed to take any or adequate steps to ensure that Carnie was out of the mortgage business and not playing a role in Argosy Investments affairs.

(b) In carrying out their separate regulatory functions, neither the Registrar nor the OSC communicated with one another nor shared information in the possession of the other, nor sought out information in the possession of the other, which would have materially altered the actions each regulator took with respect to Carnie, and which would have or should have resulted in Argosy Investments being deprived of its mortgage broker's licence rendering it unable to lend money to

borrowers (which would remove the business raison d'être for its parent to raise funds from the public to lend to the subsidary), and would have resulted in the OSC regulating syndicated mortgage investments, and declining to permit Argosy Finance to issue and sell debentures to the public or to market its RRSP's, without appropriate safeguards. In having failed to have so communicated or sought out information from the other, both regulatory agencies were wrong and unreasonable.

(c) The OSC itself was wrong or unreasonable in determining that the sale of the syndicated mortgage investments was not a security under the Securities Act, it performed an inadequate review of the final draft prospectus of the Series I debentures for which it issued its issuer's certificate to Argosy in 1978, it proceeded to approve the final prospectus for the Series II debentures in 1979 notwithstanding the misgivings of its staff accountant and solicitor with respect to the adequacy of the financial information being provided to the OSC in respect of the currency of payments on Argosy's mortgage portfolio, and the OSC granted certain exemptions in 1979 to the Argosy RRSP program.

In his written report, the Ombudsman recommended that all investors whether in mortgages, RRSP's or debentures, be compensated to the extent of 50% of their net losses, together with interest from the date of Argosy's collapse. At the public hearings, the Ombudsman clarified his recommendation as to interest by proposing a rate in the 12% range on a compound interest basis.

The Ombudsman made a number of other recommendations quite apart from the question of compensation. By and large those other recommendations have been satisfactorily dealt with by the governmental organizations involved and have been essentially implemented. They disagreed however with the recommendations concerning compensation, and it is with respect to those

recommendations that the matter comes before this Committee and which formed the basis of its hearings and deliberations.

GOVERNMENTAL POSITION

The two separate regulating bodies, both were at the material time under the ministerial supervision of the Ministry of Consumer and Commercial Relations. The Ministry's position is set out in a number of letters (and accompanying enclosures) from both the OSC and the Minister, as well as in a summary point form statement, all of which were filed with the Committee during its public hearings and are a matter of public record. The position of the governmental organizations involved is more particularly set out in those documents and in view of their bulk, are not appended to this report. In brief summary, the Ministry's position was as follows:

(a) There was no breach of any standard of care then existing, in the way in which the two governmental organizations dealt with the various matters delineated in the Ombudsman's report.

(b) A significant number of the matters criticized by the Ombudsman were matters concerning the exercise of judgment by the governmental organizations, and one can exercise judgment that was ultimately proved to have been incorrect, without the exercise of that judgment being wrong or unreasonable.

(c) Even if there were governmental error involved in the losses suffered by the investors, the role of other non-governmental organizations should have been considered, including but not limited to, the company's principal banker, the company's principal auditor, and the company's directors, and if there were governmental error, the proportion to which governmental error contributed to the losses, is significantly less than the proportion allocated by the Ombudsman.

THE COMMITTEE'S HEARINGS

The Committee met in camera to be briefed and prepare for its public hearings on April 10th and 11th, and conducted four days of public hearings on April 13th, 14th, 15th and 16th. It met again in camera to consider its recommendations and its report, on May 6th, 19th and May 26th. It received and reviewed approximately 2,000 pages of material, some of which had not been previously given to the Ombudsman during his investigation, a circumstance about which comment appears later in this report. Much more documentary material was reviewed by the Committee's counsel in an attempt to reduce the documentary material to even the 2,000 pages that the Committee did receive and consider. In addition, the Committee heard evidence from the Ombudsman, three members of his staff who participated in the investigations, and heard from his counsel in this matter, who is also an experienced securities lawyer and who acted as an expert securities consultant to the Ombudsman. The Committee also called representatives of two of the investors associations to give evidence as witnesses at the Committee's request. In the normal course, the Committee does not hear from complainants, as it has been the Committee's consistently held view that the Ombudsman speaks for the complainant and is a competent, skilled, and experienced advocate before this Committee. In this particular case, given the widespread nature of the impact of the Argosy collapse, the large number of investors, and the fact that many of the members of the two investors associations may not have been actual complainants to the Ombudsman, the Committee called, for brief periods of time, and heard evidence from the two investor groups. This should not be taken as a relaxation of the Committee's general policy with respect to hearing from complainants. Given the unusual and unique circumstances of this particular case, the Committee took the action that it did.

In addition, the Committee heard from a representative of the Registrar of Mortgage Brokers, from the Chairman of the Ontario Securities Commission, from the Director of the Ontario

Securities Commission, from a forensic accountant who spearheaded the accounting investigation into Argosy's affairs, an OSC staff accountant, and counsel for the Ministry.

THE COMMITTEE'S CONCLUSIONS

The Committee has concluded that it cannot support the recommendation of the Ombudsman with respect to compensation. This flows from the conclusion of the Committee that no governmental error is demonstrated to such a degree as to warrant a finding that the conduct of the Registrar or the OSC was wrong or unreasonable as those terms are meant in the Ombudsman Act, and that therefore, compensation is not warranted.

In the sections of the report that follow next, the Committee briefly sets outs its reasons for so concluding with respect to the various significant matters raised by the Ombudsman. The Committee believes that generally speaking there was no breach of any then-existing standard of care or rules of operation, and that any criticism of the conduct of the governmental organizations involved falls within those areas of judgment, for which the organizations involved cannot be said to be wrong or unreasonable.

THE ONTARIO SECURITIES COMMISSION

THE DIRECTOR'S 1975 DECISION

Both the OSC and the Ombudsman agree that the decision as to whether the syndicated mortgage investments were a security within the meaning of the Securities Act, is a decision that involves the exercise of refined judgment, the balancing of many factors, and the search for and weight to be given to subtle differences in apparently similar schemes. The Ombudsman's own securities consultant uses the following terms:

" ... involves matters of judgment, frequently of a refined nature, reflecting a balancing of sometimes contradictory elements of a particular scheme. The judgments may be particularly difficult in view of seemingly minor differences between schemes which may have a significant influence on a determination of whether an investment contract is involved ...

... schemes involved substantial similarities and relatively subtle differences ... ".

The Ombudsman also concedes that there are judgmental areas in the course of governmental regulation in which it is not wrong or unreasonable to come down on the incorrect side of the line. In areas involving the exercise of judgment, the Committee should be wary of exercising the keen vision and incisive wisdom that hindsight affords. On the whole, to call the 1975 decision of the Director and his failure to change it in the late 1970's as being wrong or unreasonable is simply too much after the fact second guessing. Regulators, like anyone else, need some freedom in exercising judgment, without worrying that it will be second guessed and criticized later on to the point of compensation.

The Committee does not agree that the matter should have been looked at and re-considered in the late 1970's following the decision of the Supreme Court of Canada in the Pacific Coast Coin case. The refinements to certain securities questions made by the Supreme Court of Canada in that case were not material to the relevant issues in deciding the "syndicated mortgage - security" question. The decisions of the Divisional Court and the Ontario Court of Appeal in that same case had been released prior to the Director's 1975 decision in connection with the Argosy syndicated mortgages and there was nothing significant in the later 1977 Supreme Court of Canada decision (which upheld the lower Court decisions) that bore materially on the Argosy question.

The Ombudsman also suggests that even if the Director's 1975 decision is a matter of permissible incorrect judgment, the basic facts or data on which to base that judgment had not been assembled. The Ombudsman points to the failure to ascertain the representations made to investors, the lack of search for evidence of mortgage switching, and the treatment of the syndicated mortgage investments by being deposited into one Argosy bank account. None of these criticisms have any practical merit.

The first solicitation for syndicated mortgage investments was made in the summer of 1975 and by December 1975, only $100,000 had been invested. In late August 1975, when the OSC staff investigated the question, there were probably no syndicated mortgages in place and it is highly unlikely that any mortgage switching occurred or that any investors had actually been solicited by means of oral representations and induced to make a syndicated mortgage investment. It is difficult to justify criticism where someone's failure is a failure to inquire after information that in all probability did not exist to be found even if it had been enquired after, nor can a failure to search for what was not there justify compensating for the failure to search. As to the depositing of syndicated mortgage investments into one pooled Argosy bank account, of the Committee accepts that this would have made no difference to the conclusion made by the Director in 1975, in light of both the absence of a guarantee against loss of investment and the fact that it was the sale of a specific interest in a specific mortgage that was being promoted.

SERIES I DEBENTURES

While the Ministry's independent consultant agrees with the Ombudsman's criticism that the OSC staff review of the final draft prospectus on the first series of debentures was inadequate, and while the OSC so conceded in its written response to the Ombudsman's Section 19(3) notice, the Ministry tendered at the Committee's hearings, the correspondence from the OSC staff

accountant who indicated that he did in fact carry out a review of the potential deficiencies in the final draft of the prospectus. The Ombudsman also told the Committee that both the staff accountant and staff solicitor took the decision of the Commission in 1978 on Carnie's criminal record as giving a green light to the approval of the prospectus and the suggestion that they were not to raise new concerns. During the Committee's hearings, the Ministry offered no rebuttal of those assertions. It is clear that the Commission's 1978 decision merely stated that Carnie's previous conviction for fraud by conversion should not stand as a bar to Argosy's application for prospectus approval, but it still directed the Commission staff to consider the application for prospectus approval on its merits.

With the benefit of hindsight, it may be that OSC staff could have or should have done a better job in reviewing the final draft prospectus on the Series I Argosy debentures. The Committee however is persuaded that either singly or cumulatively with other matters, any such inadequacies neither constitute wrong or unreasonable conduct sufficient to warrant compensation, nor play a significant enough causal role in the losses or part of the losses to Argosy investors, so as to justify compensation.

SERIES II DEBENTURES

For both the prospectus accountant and solicitor to submit the file memorandum that they did, is highly unusual and is indicative of the reservations that both had in signing off on the prospectus. In the ultimate result, the allowance for doubtful accounts, (or conversely, the state of currency of the payments of the Argosy mortgage portfolio) proved to be woefully inadequate. This does not however make their judgment to sign off wrong or unreasonable. In the view of the Committee, the decision of the staff accountant and solicitor to sign off on the prospectus falls within that judgmental range which permits a judgment to be exercised that ultimately turns out to be incorrect, but is not thereby wrong or unreasonable.

RRSP PROGRAM

Argosy had voluntarily brought this program to the attention of the OSC. Because this was done during the height of the January - February 1979 RRSP season and in order not to punish an issuer for voluntarily coming forward to the OSC, the staff recommended that a four-week exemption to March 1st, 1979, be granted, that the exemption not apply to trades after March 1st, and that the contributions be held in escrow, pending appropriate regulatory review of the program. The Commission itself however did not follow the staff's recommendations. It granted the exemption, but without any of the safeguards. It did not follow up after March 1st, 1979, and Argosy carried on with its program notwithstanding that the exemption had lapsed.

Neither the Ombudsman nor the Ministry, in the public hearings, devoted a great deal of attention to the RRSP program. The Commission's decision to proceed as it did is again a matter of judgment. There was nothing presented to this Committee to indicate what procedural or substantive rules or standard of care had been violated by the Commission's decision. On the whole, the Committee is not persuaded that the Commission's conduct in connection with the RRSP program, is wrong or unreasonable to such an extent as to warrant compensation, nor that either alone or cumulatively with other matters, it played a significant enough causal connection in the Argosy collapse as to warrant compensation being awarded.

REGISTRAR - OSC COMMUNICATIONS

It is clear that there was no communication between the OSC and the Registrar. Neither passed on information it had to the other, nor did either seek out information the other might have had when it dealt with Argosy matters. Both the Registrar and the OSC concede now that this is not desirable and have taken steps to

establish procedures for the exchange and seeking out of information.

In the view of the Committee, there was no breach of any then-existing standard of care on the part of the Registrar and the OSC. While it would have been preferable for them to have communicated with each other and to have sought information out from each other, that was not the then practice or established standard. It is far too easy in the view of the Committee, to second guess from hindsight as to what should have been done or what would have been better to have been done. Looked at in the context of the then current times in the 1970's, the Committee is satisfied that whatever the communication failings were, they were not of such a nature so as to warrant them to be found to be wrong or unreasonable within the meaning of the Ombudsman Act, or to warrant being compensated for.

REGISTRAR OF MORTGAGE BROKERS

In the conduct of his affairs and in regulating Argosy Investments, there are a number of matters that through hindsight, can be identified as things that either should not have been done or could have been done better. These include the matters raised by the Ombudsman. In the view of the Committee, these are all matters which relate to the exercise of judgment, including the settlement of disputed cases before an administrative tribunal and the trade-offs to be made in order to obtain certain other concessions that in the Registrar's judgment were important. As to the Registrar's judgment in how and to what extent he regulated, inspected and followed up with respect to Argosy Investments, Carnie, or the true and controlling share ownership of Argosy Investments through its parent company, the Committee is persuaded that while the exercise of that judgment proved in the ultimate result to be incorrect, it is with the benefit of hindsight and with too much second guessing, to say that his actions were wrong or unreasonable within the meaning of the Ombudman Act, or that they warranted compensation.

EX GRATIA PAYMENT

In the normal case, this Committee recommends to the Legislature, whether, and if so to what extent, the House should adopt the recommendations of the Ombudsman. In the ordinary case, its recommendations should go no further than that.

This case is anything but the ordinary case. In 12 years of dealing with these matters (first as a select committee and more latterly as a standing committee), this Committee has not felt itself moved by the circumstances of any case to make any further recommendation either to the House or the responsible Minister, other than one concerning whether and to what extent the Ombudsman recommendations should be supported. Because of the unique circumstances of this case, the Committee feels constrained to make that extra recommendation.

While none of the conduct has been found to be serious enough to warrant being described as wrong or unreasonable within the meaning of the Ombudsman Act, or to warrant compensation, the Committee has identified a number of matters where the governmental organizations involved could have, with the benefit of hindsight, done a better job. That alone however would not justify the Committee making any extra recommendation. Given however the size and nature of the frauds or self-dealing involved on the part of Argosy and Carnie, together with the large number of relatively small-dollar investors, a significant number of whom were of advanced years, the Committee recommends to the House and to the responsible Minister that they consider whether or not, an ex gratia payment should be made to investors. Should a decision be taken to make such an ex gratia payment, it is not the function of this Committee to suggest any parameters for that payment. However, given the extensive material involved and the benefit that this Committee has had in considering both

the documentary and the oral evidence, the Committee invites the Minister and the House to consider the following, if it should be determined that an ex gratia payment should be made:

(a) Only individual investors should be considered, not corporate investors.

(b) Only investors who are at arm's length with Argosy should qualify for an ex gratia payment, bearing in mind that some lower level employees who could not be said to be principal officers, directors, or major role players in Argosy, may have made investments and should be considered as arm's length.

(c) Whatever percentage of loss may be paid, only net losses should be considered. Net losses would be net of any recovery from receivership or third parties.

THIRD PARTY CAUSES

It is not possible for the Ombudsman to investigate and make recommendations with respect to the conduct of non-governmental parties; the Ombudsman's statutory mandate is limited to governmental organizations. In carrying out his investigation and making his recommendations, the Ombudsman did not investigate nor report on the contributing role, if any, and the degree of responsibility, if any, that should be attributed to such non-governmental parties. These non-governmental bodies would include Argosy's principal banker, its principal auditor, and its directors, but would not be limited to those organizations or groups of people.

This Committee did not hear from or call upon any such non-governmental organizations or persons, since they are outside the Ombudsman's statutory mandate. In its evidence to the Committee, counsel for the Ministry pointed to certain documentary evidence which in his view indicated that these

non-governmental organizations or persons played a contributing role in the losses suffered by Argosy investors. Because this Committee did not hear from or give an opportunity to these non-governmental organizations and persons to present their side of the story, the Committee does not believe that it is in a position to make any finding in respect of whether or not these non-governmental organizations or persons did or did not play a contributing role in the losses of the Argosy investors.

APPENDIX "A"

PROCEDURAL ADDENDUM

PROCEDURAL ADDENDUM

One matter arose at the outset of the Committee's hearings on which the Committee believes it must comment. This concerns the tendering to the Committee of documentary evidence not made available to the Ombudsman during the course of his investigation.

More than 500 pages of new documentary material were tendered on behalf of the Ministry to the Committee at the opening of the public hearings. These documents had not been previously presented to the Ombudsman during the course of his investigation, and indeed, they were first given to the Ombudsman one or two business days prior to the commencement of the public hearings, then taken back for amendment and correction, and only returned to the Ombudsman the night before the commencement of the public hearings.

Notwithstanding this and making it clear that the Ombudsman would not be able to assist the Committee with these documents nor deal with the matters raised in them either adequately or at all, the Ombudsman did not object to the tendering of these documents, in the interests both of full disclosure, and in the interests of not causing any further delay to the consideration of this matter. Because he did not object to the tendering of these documents, it was not necessary for the Committee to determine whether the prejudice to the Ministry's position by not receiving the documents would be outweighed by the prejudice caused to the Ombudsman by receiving those documents. Notwithstanding, the Committee believes that this sort of thing is very detrimental to the integrity of the Ombudsman's process and the usefulness of both his investigation, his reports, and this Committee's consideration of his reports, and should not be permitted to happen again.

The Committee did not receive any satisfactory explanation as to

why these documents had never been provided to the Ombudsman during the course of his investigation, nor why they were in any event provided to him at such a late hour. While the Committee is satisfied that there was no ulterior motive on the part of the Ministry nor any intent to hold back documents and save the best for last, the Committee believes that the reason why this happened is simply that the Ministry brought in new lawyers to deal with its position at the Committee's hearings. With a fresh mind, come fresh ideas. The new lawyers, in their judgment, felt these additional documents presented a justification of the Ministry's position, that those who preceded them did not.

Whether they are right or wrong in so thinking, is beside the point. If the Ombudsman is to do his job and recommendation denied cases not unnecessarily come before this Committee, it is essential that governmental organizations, in delivering their response to the Ombudsman's Section 19(3) notice, set out their position completely and provide the Ombudsman with whatever documentary support for their position is available to them. Much of the new material submitted by the Ministry was obtained from non-governmental parties, most likely through the execution of search warrants, as part of the investigation and prosecution process of criminal charges laid against Carnie. That material however was in the hands of the people that the Ministry's present cousel obtained it from and was in those hands and therefore available to the Ministry, prior to the Ministry's submitting its responses to the Ombudsman's Section 19(3) notice. It is not enough to say that in a case where there is a warehouse full of documents, that the Ombudsman was ushered into the warehouse and told that he could see whatever he wanted to see. When a governmental organization responds, it should include with its response whatever documentary evidence it relies on in support of its position. There was a reference in one or more of the responses to the role alleged to have been played by non-governmental persons or organizations, and these documents should have been included with that response.

The Committee is not unmindful of the fact that documents that may not have seemed relevant for a response to a Section 19(3) notice because of the contents of that notice, may appear to be relevant given the way in which the Ombudsman's final recommendation and his reasons for so doing are in fact expressed. It is the almost universal practice for a governmental organization upon receiving the Ombudsman's final recommendation, to respond indicating whether it will implement those recommendations, or if it will not, some brief statement of its reasons for not doing so. In the Committee's view, that is the appropriate time to disclose any additional documents that the governmental organization feels are now relevant as a result of the way in which the final recommendation and reasons are expressed. In that way, the Ombudsman has plenty of notice of the documents if the matter proceeds to this Committee, or if the documents do suggest that he ought not to proceed further with his final recommendation, he will be able to make that judgment on an informed basis.

APPENDIX "B"

LIST OF WITNESSES

LIST OF WITNESSES

Office of the Ombudsman

Dr. Daniel G. Hill
Ombudsman

Eleanor Meslin
Executive Director

Gail Morrison
Director of Investigations

Paula Boothby
Assistant Director of Investigations

Philip Anisman
Counsel

Ministry of Financial Institutions

Brian Bellmore, Counsel
Lockwood, Bellmore and Moore

David Moore, Counsel
Lockwood, Bellmore and Moore

Ted Baskerville, Forensic Accountant
Peat, Marwick and Mitchell

Stanely Beck, Chairman
Ontario Securities Commission

Charles Salter, Vice-Chairman
Ontario Securities Commission

Paul Cherry, Chief Accountant
Ontario Securities Commission

Ministry of Consumer and Commercial Relations

David Mitchell, Director
Investigation and Enforcement Branch

Association of Argosy Victims

Patrick Mazurek
Counsel

Ted Berger
Co-Chairman

Various Argosy Investors

Miles D. O'Reilly, Q.C.

DISSENTING OPINION OF:

PATRICK HAYES
MICKEY HENNESSY
ALLAN McLEAN
ED PHILIP
YURI SHYMKO

INTRODUCTION

Some of the background and other facts pertaining to this recommendation denied case are already set out in the Report of the Committee. For the sake of brevity, this dissenting opinion will not repeat them, but will where appropriate add additional information that is material to the views of the minority.

The minority propose to express their views under the headings of Governmental Error, Causation, Governmental Contribution, Interest, Receivership and other Recoveries, and a procedural matter concerning the disclosure of documents to the Ombudsman.

GOVERNMENTAL ERROR

REGISTRAR OF MORTGAGE BROKERS

There was no regulation by the Registrar; there was only reaction, and precious little of that. Reaction occurred only when a complaint was made, and in the absence of a complaint, there was in fact nothing being done. There were statutory devices which permitted inspection or follow-up (Sections 22 to 23 of the Mortgage Brokers Act) and as a last resort a ministerial order for investigation (Section 25). By 1971 (perhaps earlier), the Registrar had formed the firm opinion that Carnie had no place in the mortgage business, that Argosy should not be permitted to employ him, and that he should not be employed by any mortgage broker. There was no follow-up investigation to ensure that the Registrar's wishes were being complied with. From 1971, the Registrar had statutory authority to refuse licensure if the business was not to be carried on in an honest and ethical fashion, and had the tools available to ensure Carnie was out of the business.

During the course of reacting to a complaint, the Registrar stumbled upon information to indicate in the summer of 1973, that Carnie was still active in the business. He correctly resolved to

see him out of the business and Argosy's operation. He was however particularly inept or ineffective in implementing that resolve. He entered into an agreement with Argosy which formed part of a Commercial Registration Appeal Tribunal ("CRAT") Order concerning Argosy.

If the correct interpretation of the 1973 agreement and CRAT order was that Carnie was not to be employed by Argosy for only a one-year period, then it was an ineffective implementation of the Registrar's resolve in the absence of any evidence that Carnie had rehabilitated himself, and in the presence of evidence that subsequent to his conviction in 1971, Argosy continued to engage in unethical or unconscionable practices in connection with blanket mortgages and employed Carnie despite the Registrar's 1971 wishes to the contrary. He was further inept in not following up during the probation period to ensure there was compliance with the CRAT order and the agreement, and to ensure that Argosy was not permitting Carnie to function in breach of it. The response of the Registrar's representative at the hearing to this was simply put "How was the Registrar to know?". This illustrates the fundamental misunderstanding of the Registrar of either his role or the powers which he did have. He had the power to check under existing statutory provisions, he could have discovered the answer to the question in the same way that his investigator did in 1969 and by checking with customers of Argosy. Even if none of that were so, the 1973 agreement (paragraph 7) contains express authority and permission granted to the Registrar to inspect to ensure that the terms of the agreement are complied with. Having so provided, the Registrar ought to have checked.

The Registrar was also particularly inept or ineffective in taking steps to ensure Carnie was out of Argosy and in his interpretation of the CRAT order insofar as it dealt with shareholdings of Carnie in Argosy. The shareholdings requirement was not contained in the December 1973 agreement. The agreement contains the reference to the one-year probationary period. The

CRAT order renews Argosy's licence on the terms and conditions set out in the agreement and imposes a further term with respect to shareholdings. This latter term stands on its own. It is simply incorrect to read it as being subject to the one year probation, and the wording used ("surrender and give up") is inconsistent with only a one year transfer of shares. If the Registrar did intend it to only be for a one-year period, then it was a totally useless or ineffective means of regulation, in the absence of any good reason to believe that Carnie had suddenly discovered ethics and would be a credit to the profession in a year's time.

Whether intended for the year or forever, the Registrar was inept in ignoring the shareholdings of Argosy Investments, and the actual control exercised through the shareholders of its parent, Argosy Finance. The annual filings made it clear to the Registrar what the parent-subsidiary relationship was, and that all shares of Argosy Investments were held in trust for Argosy Finance. The Registrar's representative at the hearing agreed that the Registrar was interested in knowing who the shareholders of a mortgage broker were to ensure that the wrong sort of people were not in the business; it makes no sense in those circumstances to ignore the shareholdings of a parent company which owns 100% of the shares of a subsidiary which is licenced as a mortgage broker. The CRAT initiated the shareholdings term in its 1973 Order and obviously felt excluding Carnie merely as an employee was not sufficient, and the Registrar ought to have ensured that the terms of the CRAT order covered shareholdings, direct or indirect, whether through a parent company or otherwise.

In 1975, there was information presented to the Registrar that Carnie was involved in the running of Argosy Investments. His lack of action either demonstrates an unwillingness to regulate, or an understanding that the probationary year having been up, it was satisfactory for Carnie to be back in the business.

In late 1975, the Registrar obtained information about a court judgment against among others, Argosy Investments, Wilcar and Carnie, for work done as a mortgage broker. Both Wilcar and Carnie were unlicenced. The Registrar's sole concern here appears to be directed to financial solvency and the need to see the judgment paid. There is nothing in his file to indicate that he satisfied himself as to the potential activities of Wilcar and Carnie as unlicenced mortgage brokers. That merited his attention and investigation even without Argosy and Carnie's past history and his views on both of them; in light of the past circumstances, his lack of action is inexplicable.

For the remainder of the decade, the Registrar's file discloses routine filings, and renewals of licences. No inspection or follow up occurs. This is explained, presumably, by the fact that no complaints were made about Argosy. The Registrar appears to attribute this to Argosy's satisfactory conduct; had he inspected, he would have discovered this was not necessarily so. Argosy was now directing itself to a class of customer and class of transaction which would not lead to complaints being directed to him.

The Registrar's failures are not individual, isolated, or random lapses. They are pervasive, repeated, and profound. The Registrar's actions and omissions were "wrong" (as that word is intended to be meant in Section 22 of the Ombudsman Act) and were unquestionably "unreasonable". The Ombudsman presents a strong and well documented case for governmental error in connection with the operations of the Registrar of mortgage brokers.

REGISTRAR - OSC COMMUNICATIONS

In the age of telecopiers, telephones, and a postal system, geographic proximity should not be required for governmental organizations to communicate with each other. The sad irony here is that until late 1977 or early 1978, both the Registrar and the OSC were located in the same building at Yonge and Wellesley

Streets, and by early 1978, when the OSC moved, it moved around the corner to the next building on Wellesley Street.

The evidence presented establishes beyond doubt that there was absolutely no communication between the OSC and the Registrar. The Registar's inspector in 1969 recommended that the OSC be notified of the Registrar's concerns not only about Carnie, but about the Argosy operations. This was not done and no explanation offered for why it was not done. Through the first half of the 1970's, as the Registrar's concerns about Carnie grew, and the 1973 agreement and CRAT order were made, none of the Registrar's escalating and significant concerns were communicated to the OSC.

From the OSC's side, it assumed that the Registrar was both regulating, and must have been satisfied with Argosy's operations since Argosy was still licenced. It made no inquiry of the Registrar, official or unofficial. Mr. Beck concedes that the exemption in the Securities Act granted to the sale of mortgages by registered mortgage brokers was enacted because those sales were made by people who were regulated by another governmental agency, and if they were not so licenced and regulated, the exemption would not be there. Mr. Beck in his March 3rd, 1986, letter to the Minister says that it was reasonable for the OSC staff to "assume" that all was well with Argosy since it was regulated by the Registrar and continued to be licenced by him. It may be that one governmental organization does not have to check up on the degree of regulation that another governmental organization should be exercising, and to this extent, there was some reasonableness in the OSC's reliance, but it only serves to point out the gravity of the Registrar's failure to actually so regulate. It does not however excuse the failure by the OSC to at least get the Registrar's impression of Argosy and its people. Licences may have been granted, but there may have been terms and conditions, there may have been problems, and the Registrar's approval of licensure may have been borderline. All this would have been relevant factors for the OSC to know. Mr. Beck concedes in his testimony to the Committee that all of the Registrar's

information would have been important to have available during the 1978 Commission hearings in which Carnie's character was an issue. He also concedes that the Registrar and the OSC ought generally to have communicated. The evidence given at that 1978 hearing of the continuous involvement of Carnie in Argosy's affairs since 1969 should also have been of interest and concern to the Registrar.

The failure of each of the two organizations to communicate with the other and the failure of each to seek information out from the other, is both "wrong" and "unreasonable", and the Ombudsman makes his case in this aspect of the matter.

ONTARIO SECURITIES COMMISSION

Insofar as the Ombudsman deals with the OSC on its own, his recommendations can be usefully broken down into four areas as follows and which are briefly discussed hereafter:

1. The 1975 syndicated mortgage decision by the Director.

2. The inadequate investigation concerning the issuance of the Series I debentures.

3. The approval of the Series II debentures, notwithstanding the reservations of staff, accountants and solicitors.

4. The decision of the Commission in respect to Argosy's RRSP program.

THE DIRECTOR'S 1975 DECISION

The signatories to this dissenting opinion concur with the Report of the Committee on this individual item, but this either alone or cumulatively with those other individual occasions

where the dissenting opinion agrees with the Committee, does not in the view of the signatories to this opinion affect the result which they believe is the appropriate one and the one that is advocated in this opinion.

SERIES I DEBENTURES

The Ombudsman's criticism is that on the submission of the second draft prospectus for Series I debentures, the staff review (following the delays that occurred while the Director and then the Commission held hearings into Carnie's suitability of character) was inadequate. The OSC's independent expert agrees. Mr. Beck so concedes in his March 3rd, 1986 letter. He recants somewhat from that by submitting at the Committee hearings the letter of OSC accountant, Widdowson, who pointed out that he did do a review.

Of more significance in our opinion was the evidence given by the Ombudsman to the Committee that both the staff accountant and staff solicitor took the decision of the Commission in 1978, as giving a green light to the approval of the prospectus and a suggestion that they were not to raise new concerns. The Ministry was given an opportunity to obtain the names of the individuals and to respond to that. The Ministry's presentation offered no denial of these statements.

SERIES II DEBENTURES

It was unreasonable for the OSC staff to fail to exercise the investigatory powers that were available to ascertain the true situation with respect to the state of currency of the payments of Argosy's mortgage portfolio, when the statements and comfort letters from Argosy's auditors left staff either unsatisfied or uneasy.

In so doing, this would not amount to an assertion that the OSC must re-audit the financial results of every prospective issuer.

The Ombudsman recognizes that as a general rule, the OSC must and should be entitled to rely on the representations of auditors, particularly where they are experienced and respected. The Ombudsman's point is that in a filing that produced the most intensive review ever and deficiency letters of unheard of size which occupied the unheard of period of review of one year, if Commission staff have misgivings or unease about what the outside auditors are presenting, however respected they may be or how much that material meets accepted accounting standards, Commission staff should follow through on their misgivings in those circumstances and investigate.

RRSP PROGRAM

OSC staff had it right; the Commission got it wrong. OSC staff recommended prospectus, registration, and a four-week exemption (to the end of the busy RRSP season on March 1st, 1979) with the holding of contributions in the interim in an escrow fund, pending regulatory review and determination. The Commission determined otherwise, granting an exemption for the busy RRSP season in early 1979, providing no requirement for no escrowing of contributions, and ordering no follow up after the RRSP season. No explanation was given to the Committee to justify this decision. The staff reviewing the RRSP were not aware of the then pending Series II prospectus review and its concerns re Argosy's solvency. The Commission's Order provided that "if requested to do so by the Commission as a result of a further hearing of the Commission", Argosy was to prepare and file a prospectus for the RRSP's and distribute copies to all RRSP investors. After the March 1st exemption date, the exemption was not to apply to trades. After March 1st, 1979, there was simply no follow-up and Argosy carried on. The staff solicitor's recommendation to grant the four-week exemption was reasonable; it was not only the height of the RRSP season, but Argosy had voluntarily come to the OSC on this subject and it was reasonable not to punish an issuer who so voluntarily came forward. The solicitor recommending the exemption also recommended, for example, the escrow safeguards as

a term of the four-week exemption. It was the Commission which adopted the exemption, but not the safeguards. The OSC's independent expert agrees that the Commission's conduct was inappropriate. Mr. Beck in his letters of response to the Ombudsman does not deal with the RRSP's. In his presentation to the Committee, Mr. Beck pointed merely to the fact that OSC staff were not unreasonable, they were quite demanding. That is beside the point. The problem is that the Commission, which is every much a governmental organization, as OSC staff, inexplicably ruled otherwise with no safeguards whatever, and Mr. Beck offered no explanation for the Commission's actions on this aspect of the matter in his presentation.

On the whole, the Commission's conduct in respect of the RRSP's is quite inexplicable, and was "wrong" and "unreasonable".

THE AREAS OF GOVERNMENTAL ERROR ESTABLISH A SUFFICIENT CAUSAL CONNECTION TO THE LOSSES

The failure to communicate with each other or seek information out from each other is especially significant. It is inconceivable to think that the Commission would have found Carnie to be "honest and of good repute" which is the "cornerstone to the interpretation of the registration requirements" had the OSC known and been able to weigh against the favourable evidence presented, the Registrar's contrary views about Carnie, Carnie's failure during his criminal probationary term to honour or to have Argosy honour the expressed views and requirements of the Registrar, that in the period following the CRAT order, he and Argosy acted in breach of both the Registrar's views, the signed agreement, and the CRAT order. The result of the 1978 OSC hearing would have not been the same, nor would the OSC have viewed Carnie's failure to disclose certain criminal charges (conspiracy in 1969 along with the theft by conversion charge, and obstructing justice in 1974) was as innocent or credible as the Commission and Director found them to be on the limited evidence they had before them. Mr. Beck acknowledges the

importance of this information, acknowledges that it would have impaired significantly the credibility of Carnie's explanation for the omissions, and went right up to the "edge of your question" when it was suggested that all of this information would have probably led to a different result. While he was not prepared to publicly agree with that, it is inconceivable that the Commission would have made the same decision if it had had this additional information. Such a different result of course would have made it impossible to sell the two debentures, and would surely have led to stronger orders concering the RRSP's.

It is also conceivable (although given his mild approach to regulation, it may not be so) that the Registrar, had he been informed of such a decision, and had been informed of Carnie's continued involvement in Argosy from 1969 notwithstanding his 1971 views or the 1973 CRAT order, would have taken steps to revoke Argosy's licence as a mortgage broker. His lack of regulation, ineptness and ineffectiveness detailed earlier, likewise prevented his taking the reasonable steps that should have been taken to revoke Argosy's licence and to vigorously resist any attempt to re-instate it, without adequate, complete and permanent provisions to ensure that Carnie was out of the business. Had this occurred, it is probable that Argosy would simply not have happened. It needed the licence to operate in the mortgage business. Without Carnie, Argosy would not likely have gone on.

This is not to say that the public would not have in some other way been victimized by Carnie. Carnie was a rogue. He may well have found other unsavory fields in which to operate, but there are many of those that escape government regulation.

The failure to act in respect of the RRSP's as the staff had recommended, creates a direct causal link between the approximately $3,000,000 of losses of those persons who put money into those RRSP's.

Had Argosy been stopped in the mid-70's or in 1978, it may well still have collapsed and caused loss. The size of its operations in that period as determined from the financial information in the prospectuses, indicate an operation 1/3 - 1/2 the size of Argosy at the end of its life. It appears in any event that as to the actual investors suffering losses, the largest majority were investors during the last two or three years of its operation.

While it is true that the Mortgage Broker's Act is aimed at the protection of borowers (the people to whom Argosy Investments lent money -- not the persons from whom Argosy Investments borrowed money), the fact remains that Argosy would not have had the need to borrow, if it did not have a way to then lend the money out at a profit. To do the latter, its mortgage broker's licence was essential. The fallacy of the Ministry's argument that there can be no liability because the Mortgage Broker's Act does not intend to protect investors, overlooks the evidence of the OSC to the effect that it took comfort and assumed Argosy's operations were satisfactory by reason of the Registrar's regulation, that its mortgage sales were entitled to the exemption for those that a <u>licenced</u> mortgage broker markets, and the critical need of the licence in order to provide the business raison d'être for the borrowing of funds. None of this changes the fact that had the Registrar done his job, either Argosy would have been out of the mortgage business (and thus not had a reason to borrow from investors) or Carnie would have been out of it, and Argosy as we know it would not likely have occurred.

The Ministry's argument that the Registrar's failures occurred in the first half of the 1970's, whereas most of the investments made by victims occurred in the last half of that decade is irrelevant. The consequences of the Registrar's inaction and ineptness continued into the latter half of the decade (certain information upon which he should have acted came as late as December 1975), and the consequences of the Registrar's ineffectiveness and ineptness continued through to the end, as did his failure to communicate.

GOVERNMENTAL CONTRIBUTION

The Ombudsman accepts that governmental regulation is not a guarantee of success of any investment or enterprise offered by those who are regulated; this is reflected in his recommending that government must accept "some" responsibility (not "all" the responsibility). The ReMor matter presents a useful objective precedent. In ReMor, 2/3 compensation was recommended, recognizing that 1/3 was an appropriate portion to attribute to the investor for the risk of investment. The nature of the investment in Argosy was in part similar to ReMor (investments in mortgages on real estate).

The Ombudsman was wrong in not treating the Series I and Series II purchasers differently from the syndicated mortgage and RRSP investors. Debenture purchasers had much more information, were purchasing unsecured debentures (in effect promissory notes of the corporation) and must have or should have appreciated their risky nature. Moreover, purchasers of Series II debentures had the benefit of both the risk factor portions of the prospectus and the notes to the financial statements in the prospectus which indicated the high extent of self-dealing in mortgages to borrowers who were related to Argosy management. A further portion of the loss should be visited upon the Series I and Series II Debenture purchasers for the additional risk factor involved in the purchase of unsecured debentures, and Series II Debenture purchasers should be accorded an even further portion of their own losses because of the special risk factors associated with that debenture.

The signatories to this opinion concur with the observations made by the Committee in connection with the contributing role, if any, of non-governmental organizations or persons, including, but not limited to the company's principal banker, its principal auditor, and its directors.

While in the ordinary case, the extent to which the losses were contributed to by the perpretation of a fraud by persons not previously suspected to be of dishonest inclination, would warrant some reduction in the loss attributable to governmental error. This the Ombudsman recognized in his report and appears to have made some reduction for that. In our view, it was not necessary for him to do it. The nature of governmental error that permeates throughout the Argosy affair is the failure to recognize or act appropriately against a crook. When a crook steals, he does what he is expected to do. If a loss is attributable in whole or in part to conduct that dishonest people might be expected to engage in (fraud and self-dealing), there is no reason to make any reduction to the extent of contribution of governmental error because of the fraud.

INTEREST

The average interest rate through the period from date of collapse to present on non-chequing savings accounts is approximately 9% and the average prime rate during that period is approximately 12%. Had the investors been re-paid quickly after Argosy collapsed, most would have sought refuge, after the harrowing experience, in term deposits or GIC's of Canadian chartered banks. Those average rates would be somewhere between the non-chequing savings account rates and the prime rate. We believe that a rate of 10% per annum is both fair to the investors and does not produce for them a windfall interest return above what they likely would have achieved had they been paid promptly after the collapse.

Courts rarely award compound interest. There are exceptions. One exception occurs where a trustee was charged with investing a beneficiary's money and did not do so, but instead misappropriated the funds. While Argosy does not fit this exactly, it is close. We recommend against compound interest however because it would in our opinion produce a windfall to investors. A great many victims in support of their complaints

explain how their Argosy losses required them to go back to work, or deprived them of certain necessities or small luxuries of life. This suggests that most would have lived off or spent the interest as earned rather than re-investing the interest (which is what happens when you compound the interest). As a consequence, to grant compound interest would see investors obtain a greater recovery than they likely would have obtained had they been re-paid their Argosy losses promptly after its collapse. Interest should be simple interest.

In court, interest runs on a claim from the date that written notice of a claim is given. This can be within days of the event or many months later. Since the Ombudsman in having to demonstrate error or unreasonableness is not limited to court standards, we do not believe that the Committee is necessarily bound to deal with the reckoning date of interest in the same way that a court is.

The government should not be expected to pay for its errors merely upon the public assertion of those errors. It should be accorded some reasonable time to investigate, ascertain the facts, and assess the situation. Given the complexities of the Argosy affair and fraud, it would not be unreasonable to suggest that at the end of 12 months, the government could have been in a position to make an assessment, and interest therefore should be reckoned from that date to the date of payment.

RECEIVERSHIP AND OTHER RECOVERIES

The percentage of loss being recommended is net of recoveries and therefore those who will receive any payment from the receivership proceedings, will have the percentages applied to the principal amount of their loss after deduction of the full amount of any recovery from the receivership. In addition, persons receiving payment should be required to release not only government, governmental organizations, and those employees or agents for whose conduct they are in law responsible, but all

non-governmental persons or entities as well. Claims against non-governmental organizations may still leave governmental organizations open to claims for contribution and indemnity. Some may have started proceedings.

RECOMMENDATIONS

The signatories to this opinion support the report and recommendations of the Ombudsman to the extent indicated below and believe that this Committee should have recommended to the House to the extent set out below, that it adopt the recommendations of the Ombudsman:

1. Payment to syndicated mortgage and RRSP investors of 50% of their principal loss.

2. Payment to Series I Debenture holders of 40% of their principal loss.

3. Payment to Series II Debenture holders of 25% of their principal loss.

4. Principal loss shall be reckoned after deducting all recoveries received or to be received (if not yet distributed from the Argosy receivership).

5. Interest at 10% per annum, simple interest, should be paid on the amounts awarded under Nos. 1-3 above, reckoned from a date commencing one year after the date of the Order placing Argosy in receivership.

6. Each eligible investor or debenture holder shall be only those persons or entities that were at arm's length to Argosy or its directors or principal officers, it being the intention of this recommendation that lower level employees,

who could not be said to be in a position of exercising any effective control or influence on Argosy's affairs, should be treated as arm's length investors.

7. Appropriate releases and assignments of claim should be taken from each person to whom payment is made, which release and assignment will include all claims against not only governmental organizations, their employees, agents or other persons for whose conduct they are in law responsible, but also the non-governmental organizations to the extent that any could or do take proceedings against either the Crown or any governmental organization, their employees, agents, or such other persons for whose conduct they are in law responsible, for contribution or indemnity.

EX GRATIA PAYMENT

The role of this Committee and of the Ombudsman is to dispense justice, based on the merits of the case, not charity. If in fact a governmental organization was not wrong or unreasonable, then no payment should be made. This Committee has traditionally based its recommendations on the merits of the complainant's case, not on the personal circumstances of the complainant, however deserving.

To recommend payment or consideration of payment on an ex gratia basis where no merit is found in the complainant's case, is for the Committee to improperly enter the realm of government policy making. To find "no liability" should lead to no compensation of any kind. To call for the consideration of an ex gratia payment where no liability is found, is to suggest that government dole out charity where there is no fault or liability in the government's conduct, and would create an unacceptably dangerous precedent.

The victims of the Argosy collapse deserve to be compensated because the right and justice of their case requires it, not because they should receive charity.

INVESTOR CONFIDENCE

Those investments which are covered by regulation must have the confidence of the small investor or the small investor will simply not make use of them. The findings and recommendations of the Committee must inevitably destroy the confidence of the small investor in such investments.

PROCEDURAL ADDENDUM

The signatories to this dissenting opinion wish to make it clear that they concur with the Committee's views contained in Appendix "A" to its report.

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